United States Department of Labor
Employees' Compensation Appeals Board

D.F., Appellant	)	
and	)	**Docket No. 19-1425**
	)	**Issued: February 6, 2020**
DEPARTMENT OF DEFENSE, EDUCATION AGENCY, Guantanamo Bay, Cuba, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 17, 2019 appellant, through counsel, filed a timely appeal from a March 28, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a right ankle condition causally related to the accepted January 29, 2018 employment incident.

FACTUAL HISTORY

On February 22, 2018 appellant, then a 52-year-old teacher, filed a traumatic injury claim (Form CA-1) alleging that on January 29, 2018 she twisted her ankle and foot on a broken portion of the sidewalk and experienced numbness and swelling while in the performance of duty. She stopped work on January 30, 2018 and returned on February 2, 2018.

In a February 15, 2018 statement, an employing establishment nurse, Nakeha Russell, explained that when she went to visit appellant in her classroom after she fell for a second time, she observed her hopping back and forth on her noninjured ankle and appellant advised that she slipped and fell on a wet spot while on the way to the bathroom. She then suggested that appellant make an appointment with her physician for evaluation, rather than an emergency room visit, as there was no evident deformity in her ankle.

In a development letter dated February 23, 2018, OWCP advised appellant of the deficiencies of her claim. It informed her of the type of factual and medical evidence necessary to establish her claim, including a narrative medical report from her treating physician which provided a diagnosis and a physician's rationalized medical explanation as to how the alleged employment incident caused the diagnosed condition. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was received.

By decision dated March 29, 2018, OWCP denied appellant's claim, finding that she had not submitted medical evidence containing a medical diagnosis in connection with the accepted January 29, 2018 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Thereafter, OWCP continued to receive evidence. In a February 2, 2018 medical report, Dr. Edward Wiemholt, Board-certified in internal medicine, diagnosed a significant right ankle sprain and lower back strain. He noted that appellant should not perform any prolonged standing, walking or carry heavy objects for two weeks as she recovers.

Appellant submitted the first page of a February 26, 2018 authorization for examination and/or treatment (Form CA-16) in which the employing establishment noted that appellant rolled her foot and sprained her ankle due to employment incidents occurring on January 29 and February 3, 2018.

On June 14, 2018 appellant requested reconsideration of the March 29, 2018 decision. She indicated that she suffered two separate injuries to the same leg, while working on January 29 and February 5, 2018. Appellant noted that she had previously uploaded medical evidence in support of her claim and a report from Fort Belvoir Medical Center attributed prolonged swelling to a distal fibular fracture.

By decision dated September 12, 2018, OWCP modified its prior its March 29, 2018 decision to accept that the January 29, 2018 employment incident occurred as alleged and that the medical evidence was sufficient to establish diagnoses of right ankle sprain and a lower back strain. However, it denied appellant's claim because the medical evidence of record was insufficient to establish that her diagnosed conditions were causally related to the accepted employment incident.

OWCP subsequently received the second page of a December 16, 2018 Form CA-16 from Dr. O.A. Akintonde, Board-certified in family medicine, where he opined that appellant suffered a high ankle sprain while at work on January 29, 2018.[3] Dr. Akintonde also noted appellant's preexisting Achilles tendinitis and plantar fasciitis.

On January 4, 2019 appellant, through counsel, requested reconsideration of the September 12, 2018 decision.

By decision dated March 28, 2019, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,[4] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.[7] First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[8] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[9]

[3] The form notes January 28, 2018 as the date of injury, which appears to be a typographical error.

[4] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

[8] *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[9] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence sufficient to establish such causal relationship.[10] The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[11]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a right ankle condition causally related to the accepted January 29, 2018 employment incident.

In his December 16, 2018 Form CA-16, Dr. Akintonde diagnosed a high ankle sprain and attributed it to an injury that appellant had suffered at work on January 29, 2018. He also noted her preexisting Achilles tendinitis and plantar fasciitis. However, Dr. Akintonde did not provide sufficient rationale explaining his conclusion that her condition was caused by the accepted January 29, 2018 employment incident. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted incident resulted in the diagnosed condition is insufficient to meet appellant's burden of proof.[12] Moreover, the need for a rationalized medical opinion based on medical rationale is especially important in this case as the evidence suggests that appellant had a preexisting medical condition.[13] For these reasons, Dr. Akintonde's report is insufficient to meet appellant's burden of proof.

In his February 2, 2018 medical report, Dr. Wiemholt diagnosed a significant right ankle sprain and lower back strain and provided appellant with work restrictions to follow for two weeks. However, he offered no opinion regarding the cause of her medical conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[14] For this reason, Dr. Wiemholt's medical report is also insufficient to meet appellant's burden of proof.

Appellant also provided a February 15, 2018 statement from Nakesha Russell, an employing establishment nurse. Certain healthcare providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered physicians as defined

[10] *K.V.*, Docket No. 18-0723 (issued November 9, 2018).

[11] *I.J.*, 59 ECAB 408 (2008).

[12] *See Y.T.*, Docket No. 17-1559 (issued March 20, 2018).

[13] *See M.E.*, Docket No. 18-0940 (issued June 11, 2019); *E.V.*, Docket No. 17-0417 (issued September 13, 2017).

[14] *R.Z.*, Docket No. 19-0408 (issued June 26 2019); *P.S.*, Docket No. 18-1222 (issued January 8, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018).

under FECA.[15] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[16]

As appellant has not submitted rationalized medical evidence establishing that her conditions are causally related to the accepted January 29, 2018 employment incident, the Board finds that she has not met her burden of proof to establish her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a right ankle condition causally related to the accepted January 29, 2018 employment incident.

[15] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[16] *See M.F.*, Docket No. 17-1973 (issued December 31, 2018); *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk,* 57 ECAB 316, 320 n.11 (2006). Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 6, 2020
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board